SEP 26 1955
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1955

No. 423

RALPH A. CHINBURG, doing business as Fremont Plumbing Shop; SUNSET LUMBER AND HARDWARE COMPANY, a Wyoming corporation; ED VON KROSIGH; CLARENCE E. BLOMBERG; and C. A. McDOUGALL, Sheriff, Fremont County,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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RALPH A. CHINBURG, doing business as Fremont Plumbing Shop; SUNSET LUMBER AND HARDWARE COMPANY, a Wyoming corporation; ED VON KROSIGH; CLARENCE E. BLOMBERG; and C. A. McDOUGALL, Sheriff, Fremont County,

PETITIONERS,

vs.

THE UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above cause on June 29, 1955.

Opinions below

The opinion of the Circuit Court of Appeals has not yet been reported in the Federal Reporter. It is reprinted as part of the appendix. The opinion of the district court has not been reported but is set forth in the record, pages 22-29.

Jurisdiction

The judgment sought to be reviewed was rendered and entered on June 29, 1955. No petition for rehearing has been filed nor have the petitioners applied for an order extending the time within which to petition for certiorari. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254(1).

Question presented

Whether applicable state statutes, giving to laborers and material men a lien upon the building alone, can be enforced by decree of the state court permitting the sale and removal of the building, where title to the land upon which the building was constructed is held by the United States of America in trust for an Indian ward, such building having been placed upon the land under contract with the Indian, admittedly competent to contract, and paid for out of her unrestricted funds.

Statutes and constitutional provisions involved

The relevant statutes and constitutional provisions are set forth in the Appendix, *infra* pp. 14 to 16.

Statement

This action was instituted by the United States to set aside certain judgment liens decreed (in state court litigation between four of the petitioners and an Indian ward

of the United States) against fixed improvements erected on land held by the United States in trust for the Indian. The facts were stipulated and are as follows:

Certain land in Wyoming was, on January 6, 1908, patented to Kills Above, or Kate S. Breaker. The land was allotted to the Indian under the provisions of the General Allotment Act of February 8, 1887, 24 Stat. 388, 25 U.S.C. 331 *et seq.* As required by section 5 of that Act, 25 U.S.C. sec. 348 *infra*, p. 14, the patent provided that title is in the United States in trust for the Indian for a period of twenty-five years (Stipulation, par. 4, R. 20; Govt. Ex. 2, original). The trust period has been extended by Executive Orders until 1968, as authorized by section 5 of the General Allotment Act (Stipulation, par. 5, R. 21).

The land so patented was conveyed by the heirs of Kate S. Breaker by deed of June 12, 1950, to Esther Chamberlin, an enrolled Arapahoe allottee, which deed preserved the status of the land as held in fee by the United States (Stipulation, par. 4, R. 20, Govt. Ex. 3, original).

In September, 1951, Esther Chamberlin contracted with Ernest Grider, d/b/a U. S. Construction Company, for the erection of a dwelling house on the trust property (Fdg. 4, R. 30). The petitioners, other than C. A. McDougall, furnished labor and materials in the construction of the house and filed notice of claim of liens upon the improvements (Fdg. 5, R. 30). Esther Chamberlin paid to Ernest Grider $18,714.00 in full satisfaction of her indebtedness for the house, such payment being out of her unrestricted funds. (Stipulation, par. 6, R. 21). The four petitioners who had filed mechanics' liens, not having been paid off by Grider, filed suits against the Indian in the District Court of Fremont County, Wyoming, seeking en-

forcement of the liens, and on September 23, 1953, judgment was entered against the Indian for an aggregate amount of $4,968.49, with interest at 7%. The judgment declared liens for such amount (Fdg. 6, R. 30-31). The state court judgment provided as follows (R. 8):

> 2. That the plaintiffs are entitled to a lien upon the dwelling house building and improvements placed upon said real property under the contract with Ernest Grider, * * *, but that said plaintiffs are not entitled to a lien upon one acre or any of the said real property hereinabove described.

The judgment entered in those cases further appointed the Sheriff of Fremont County, Wyoming, to sell the improvements to satisfy the liens as declared (R. 10).

The United States was not a party to the suit and did not appear therein (Fdg. 8, R. 31). Thereafter, on December 10, 1953, the United States filed its complaint in the United States District Court for the District of Wyoming (R. 1-4) against the lienors and C. A. McDougall, Sheriff of Fremont County. In summary, the complaint alleged that the United States holds legal title to the land and improvements, was not a party to the state court litigation, and has not consented to such a suit. The complaint prayed that the liens be set aside, that the Government's title be quieted against any claims of the defendants, and that they be enjoined from levying execution, selling, or removing the improvements.

The cause was submitted to the District Court on the foregoing stipulated facts, and on November 5, 1954, that court entered its findings and conclusions. The court concluded that the state court judgments are valid and that the Government's application for injunctive relief should be denied (Concl. 8, 9; R. 32). The court thereupon en-

tered judgment dismissing the action on the merits and dissolving a preliminary injunction previously granted (R. 32-33). The cause was then appealed by the Government to the United States Court of Appeals for the Tenth Circuit. On June 29, 1955, that court entered judgment reversing the cause and remanding the same to the district court with instructions to enter judgment for the United States (R. 9). *Note

Jurisdiction of the United States District Court in the first instance was predicated upon the fact that the United States was plaintiff and the defendants were citizens of the State of Wyoming.

REASONS RELIED ON FOR ALLOWANCE OF WRIT

The decision of the court below, in deciding that the United States is entitled to injunction against the enforcement of the judgment of the state court, has erroneously and improperly denied effect to the laws of the State of Wyoming as being invalid and repugnant to the laws of the United States.

The judgment of the District Court of Fremont County, Wyoming (R. 7-11) and the Findings and Conclusions of the United States District Court (R. 29-31) disclose that both courts consider that the Wyoming lien law was applicable to the present case and that a lien could be enforced against the building alone. The enforceability of the lien against the building alone we consider clearly justified by reference to the Wyoming statutes set forth in the Appendix, *infra* p. 15, and in keeping with the construction of these statutes by the Wyoming Supreme Court, *Clark v. Shoshoni Lumber Company*, 31 Wyo. 205, 244 P. 845.

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*Reference to Clerk's Transcript.

We believe that the court below has accepted that construction and the only question in the minds of that court was whether the dwelling erected on the trust patent land was subject to such lien law so as to permit its sale separate and apart from the land (Opinion p. 3, R. 5). We consider that this question the court decided adversely to the lien claimants on the ground that the enforcement of such lien would be repugnant to the laws of the United States relating to Indians and would frustrate the declared policy of the United States with respect to lands allotted to Indian wards under the so-called trust patents (R. 8). We contend that this ruling was erroneous and that there is no repugnancy with federal law or policy in the enforcement of the lien against the building in this case.

(a) Implicit in the judgment of the court below is a misconception of the law of improvements and its relation to the law of mechanics' liens.

Throughout these proceedings, the argument of the Government has consistently been based on the unsupported assertion that the building in question was at all times part and parcel of the land and therefore owned by the United States. If it be arbitrarily assumed that when and as each new board and brick was added to the building the same irrevocably became a part of the land owned by the United States, it may then follow that no lien can be asserted against that owner. But to support its position, the Government necessarily cites the general proposition of law that permanent improvements become a part of the realty on which they are erected. We submit that this rule is subject to an exception, namely, that such improvements do not become a part of the realty as against the unsatisfied claims of laborers and material men and

that the Government may not rely on the general rule without also being bound by the exception thereto.

We have cited Wyoming as being a state where by statute the lien may be enforced against the improvement alone. This rule is one of rather general application, being also applicable in Missouri, from which state the Wyoming lien law was taken, *Ford v. Dixon,* 157 S. W. 99 (Mo. App.) in Oklahoma *Braden Company et al. v. Lancaster Lumber Company et al.,* 170 Okla. 30, 38 P. 2d 575; in California, *English v. Olympic Auditorium,* 217 Cal. 631, 20 P. 2d 946. See also 57 *C. J. S.* Mechanics' Lien 739, sec. 188; 36 *Am. Jur.* Mechanics Liens 115, sec. 173. In the Oklahoma and California cases, it is specifically held that as far as mechanics' lien claimants are concerned, the improvement does not attach or become a fixture to the land until the liens have been satisfied. Concerning this rule of law it is said in *Phillips on Mechanics' Liens,* at page 250:

> "All the earlier acts secured the lien exclusively upon real estate. Later legislation has in several states extended the lien to chattels real and personal, and repealed the doctrine of the common law, so far as the mechanic is concerned, that all buildings become a part of the freehold so soon as they are annexed to land."

The assumption of the Government, apparently acquiesced in by the court below, that the improvement vests in the landowner in all instances has never been supported by citation of authority and we have found no legal basis for the assertion.

(b) The judgment of the court below holds the lien law of Wyoming repugnant to federal law by deciding a question of federal law in conflict with applicable decisions of this court.

It has been agreed that the Indian in this case was fully competent to contract and to conduct her business affairs without interference from the United States (Stipulation, par. 6, R. 21) and we know of no law or ruling prohibiting her from entering into contracts with other persons. Furthermore, we know of no law applicable to and governing such transactions other than the law of Wyoming. Certainly, there is no federal general common law under which her contracts could be construed, *Erie Railroad Company v. Tompkins*, 304 U. S. 64, and it is considered that the laws of the State of Wyoming had general application to this Indian, her contracts and her general status unless they ran counter to some specific act of Congress or were such as might embarrass the federal government in carrying out its laws with respect to Indians, *Utah Power and Light Company v. United States*, 243 U.S. 389; *Surplus Trading Company v. Cook*, 281 U. S. 647.

1. The enforcement of the lien is not in conflict with the specific provisions of federal statute.

We first consider whether there is anything in the enforcement of the lien alone that is in violation of any specific act of Congress. The only law which seems to have come to light is section 5 of the General Allotment Act, *infra*, p. 14, authorizing the issuance of these trust patents and specifically providing that

> "* * * if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the

expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: * * *"

It might be argued that the words "contract touching the same" relate to any contract that in any way involves the trust lands. Such a construction would make it impossible for the Indian to contract for the erection of a dwelling house on the land or to bring about any improvement or development of the land through contract with another. We therefore consider that the statute renders null and void only a conveyance or a contract that may lead to a transfer of the land. We further consider that the contract of Mrs. Chamberlin for the erection of a building upon her allotment was in all respects a legal contract. Nor could the enforcement of that contract or of lien rights growing out of the contract and her failure to see to the proper disposition by the contractor of the funds paid by her to him in the slightest measure affect the land which is the only thing which under the plain language of the statute may not be alienated.

2. The enforcement of the lien is not in conflict with any policy of the federal government with respect to its Indian wards.

The court below has taken the view that the policy of the United States to protect the Indians in their lands would be frustrated by enforcement of the lien against the building in this case. Reference is made to the former decision of this court, *United States v. Rickert*, 188 U. S. 432 (1903), which decision is said to be controlling. However, in that case, the court was met with a situation where admittedly the improvements had become a part of the realty held in trust. Since it was admitted that the improvement was a part of the trust property, the court

pointed out that the sale of the property for taxes would permit the trust under which the United States held the property to be defeated and hence the improvement was not subject to taxation.

The Government and the court below bring this case within that principle by assuming the whole argument, namely, that the title to the improvement vested in the United States. It is contended that the obligation of the United States to deliver the trust property, at some dim future date when the Indian Department in its wisdom deems the Indian capable of handling this particular property, will be defeated if the lien be permitted. We fail to see how governmental policy will be defeated by refusing to permit it to usurp title to property with which it has had no previous connection.

If the *Rickert* case is not distinguishable on the facts from the present case, we submit that insofar as it is authority for the proposition that improvements erected by expenditure of the unrestricted funds of the Indian are not subject to state law, it is without sanction of congressional enactment and contrary to other pronouncements of this court. The decision in the *Rickert* case holds that the improvements are essentially a part of the land and their use by the Indian is necessary to effectuate the policy of the United States. The only policy of the United States reasonable to be deduced from the Allotment Act is that the Indian shall not waste or improvidently deal with the property granted him by the United States. There is not the slightest indication that in all other respects he shall not be perfectly free to contract and be bound as are other citizens of the state.

While the case may not be strictly analogous on the facts, the policy of Congress was again considered by this court in *McCurdy v. United States*, 246 U. S. 263

(1917) where the Government sought to prevent the sale for taxes of land bought by the Indian with released tribal funds. It was pointed out that Congress had authorized the release of the funds but had provided no control in the Secretary over the released funds or the property in which they were invested. The action of Congress was interpreted to be based on a policy of preparing the Indian for complete independence which could best be done by committing to him gradually the care of his property. It was recognized that property might be lost but the court said (p. 269-270):

> "Even if the whole trust fund should be released and, despite supervision, improvidently spent, the legally competent allottee would (270) still have his homestead and his share in valuable undivided oil, gas, and coal rights; and the legally incompetent, his surplus in lands in addition. There is nothing in the act or the facts to which it applies to extend governmental control to property in which released funds may be invested."

This is a clear recognition of the policy that the government will not prevent the Indian from freely dealing with any property that is not the express property held in trust.

If the rule contended for by the Government and accepted by the court below is correct, then it also follows that the Indian himself could do nothing with the improvements and once having placed improvements on the land would be foreclosed from ever removing the same, for whatever reason. Yet this court in *Williams v. First National Bank,* 216 U. S. 582 (1909) held that the Indian had such an interest in improvements erected upon allotted lands that the sale thereof in connection

with the settlement of a dispute as to the allotted lands was supported by a valuable consideration.

> "He (the Indian) could sell his improvements and holdings to another Indian for allotment, and lay his own on other land which he might find vacant, or which he might, in turn, purchase from another Indian."

Application of the rule applied by the court below would mean that upon erection of the improvement the Indian would have nothing to sell or remove because the title thereto was vested in the United States.

CONCLUSION

It is respectfully submitted that this petition for writ of certiorari presents important questions of federal law and the relation of that law to the laws of the sovereign states that have not been decided by this court and should be settled by decision. To what extent laws of the state shall govern the rights and obligations of its citizens, whether Indians or others, is of the utmost importance. We have found no decision of this court passing directly upon the questions raised but have endeavored by the development of logical principles from accepted premises to give effect to both the state and federal law.

It is our position that under applicable law the improvement erected upon the land does not forthwith become part and parcel of the land upon which it is constructed and that the whole contention of the Government is predicated upon that erroneous premise; that in the present case the state statutes have operated only as between the citizens of that state and, so far as the United States is concerned, the only operation of state law is to prevent the unjust enrichment of the United

States at the expense of its citizens. If it be argued that the United States will not be unjustly enriched because the whole title is held for the use and benefit of the Indian, then it follows that the Indian, a citizen of and subject to the laws of the State of Wyoming, is unjustly removed from responsibility to law of Wyoming which should be equally applicable to all citizens of that State.

We believe that the old theory that the Indian is in a state of pupilage and incompetent to manage his own affairs, that he is entitled to the intercession of the Government as against his own acts, is wholly inapplicable at the present time and that this Indian, competent in every way, must be held bound by the state law just as others.

For the reasons assigned petitioners therefor pray that a writ of certiorari issue to the Court of Appeals for the Tenth Circuit to the end that the cause may be reviewed and determined by this court, as provided by the statutes of the United States; that the judgment of said Court of Appeals be reversed and the injunction against enforcement of the judgment and decree of the District Court of Fremont County, Wyoming be dissolved and the action by the United States dismissed; and your petitioners pray that they may have such other and further remedies in the premises as to the court may seem appropriate and in conformity with law.

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Donald Spiker,
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Counsel for Petitioners.

APPENDIX

Section 5 of the Act of February 8, 1887. 24 Stat. 388, 389, 25 U. S. C. sec. 348, provides in part as follows:

> Upon the approval of the allotments provided for in section 331-334 of this title, by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: Provided, that the President of the United States may in any case in his discretion extend the period. And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void: * * *.

Article 21, section 26 of the Constitution of the State of Wyoming reads as follows:

> Public lands—Ownership of disclaimed—Taxation of non-residents—Restriction.—The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and

to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States:* * *.

Section 55-201, Wyoming Compiled Statutes 1945, provides in part as follows:

> Every mechanic or other person, who shall do or perform any work or labor upon, or furnish any material, fixtures, engines, boilers or machinery for any building, erection or improvement upon land, or for repairing the same, under or by virtue of any contract with the owner or proprietor thereof, or his or her agent, trustee, contractor, or subcontractor, upon complying with the provisions of this Act (sec. 55-201-55-224), *shall have for his work, or labor done, or materials, fixtures, boiler or machinery furnished, a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated,* to the extent of one acre. (Italics supplied).

Section 55-203, W. C. S. 1945, provides as follows:

> The lien for the things or materials furnished or work and labor *performed shall attach to the building, erection or improvements for which they were furnished,* or the work and labor was done, in preference to any prior lien or incumbrance or mortgage upon the land upon which said building, or erection, improvements or machinery have been erected or put, and any person enforcing such lien may have such building, erection or improvements sold under

execution, and the purchaser thereof may remove the same within a reasonable time thereafter. (Italics supplied.)

Section 55-221, W. C. S. 1945, provides in part as follows:

Every person for whose immediate use, enjoyment or benefit any building, erection or improvements shall be made, shall be included by the word "owner" or "proprietor" thereof, under this Act (sec. 55-201-55-224).

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 5076—May Term, 1955.

United States of America, Appellant, v. Ralph A. Chinburg, doing business as Fremont Plumbing Shop; Sunset Lumber and Hardware Company, a Wyoming corporation; Ed Von Krosigh; Clarence E. Blomberg; and C. A. McDougall, Sheriff, Fremont County, Appellees.	Appeal from the United States District Court for the District of Wyoming.

[June 29, 1955.]

Fred W. Smith, Atty., Dept. of Justice (Perry W. Morton, Asst. Atty. Gen., John F. Raper, Jr., U. S. Atty., and Roger P. Marquis, Atty., Dept. of Justice, were with him on the briefs) for the United States.

Donald Spiker and A. G. McClintock for appellees.

Before Phillips, Chief Judge, and Huxman and Pickett, Circuit Judges.

Phillips, Chief Judge.

In September, 1951, Esther Chamberlin entered into a contract with Ernest Grider for the erection of a dwelling house on an 80-acre tract of land situate in Fremont County, Wyoming. Chinburg, Von Krosigh, Blomberg, and the Sunset Lumber and Hardware Company, a Wyoming corporation, furnished labor and

material in the construction of the house and each of them filed a notice of claim of lien upon the improvements.[1] Esther Chamberlin paid to Grider, $18,714, the full amount due him under the contract. Grider failed to pay amounts due to the lien claimants, aggregating $4,446.01.

The lien claimants brought actions in the District Court of Fremont County, Wyoming, against Esther Chamberlin and Jesse Chamberlin to foreclose their claimed mechanics' liens under the provisions of Ch. 55, Wyo. Comp. Stat. 1945. The United States was not a party to such actions.

A judgment was entered in the state court awarding the lien claimants a lien upon the dwelling house and improvements placed upon the land under the contract with Grider. The judgment adjudged that the lien claimants were not entitled to a lien upon any portion of the land.

The United States brought this action in the United States District Court for the District of Wyoming against the four lien claimants and McDougall, Sheriff of Fremont County, who was appointed in the state court action to sell the house and improvements to satisfy the lien claims, to set aside the state court judgment, and to quiet the title of the United States in and to the land and the improvements thereon against the lien claimants.

From a judgment denying the United States any relief and dismissing the Federal court action, the United States has appealed.

The land was allotted to Kate S. Breaker under the provisions of the General Allotment Act of February 8,

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[1]Section 55-201, Wyo. Comp. Stat. 1945, in part provides for a mechanic's lien upon the improvements and upon the land on which they are situated to the extent of one acre.

1887, 24 Stat. 388, 25 USCA §§ 331 et seq. On January 6, 1908, a patent therefor was issued to Breaker. As required by § 5 of the General Allotment Act, the patent reserved the title to the land in the United States, in trust for the Indian, for a period of 25 years. In accordance with the provisions of the General Allotment Act, such trust period has been extended by Executive Orders until 1968. By deed dated June 12, 1950, the heirs of Breaker conveyed the land to Esther Chamberlin, an enrolled Arapahoe allottee. By the terms of the deed the trust status was preserved and the legal title remained in the United States in trust for Chamberlin.

The last statement of fact is challenged here for the first time by the lien claimants. However, their contention is foreclosed by the provisions of the deed, by a stipulation entered into by them in the state court action, by the judgment in the state court action, by stipulation entered into by them in the instant action, and by admissions of record in the instant action.[2]

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[2]The deed recited:

> "That whereas the lands hereinafter described were allotted to or inherited by the said parties of the first part under the provisions of legislation by Congress pursuant to which said lands are restricted or held in trust by the United States for the benefit of said grantors and are not subject to taxation; nor to alienation or encumbrance without the consent of the Secretary of the Interior, and whereas the said party of the second part being also a restricted Indian desires to acquire said hereindescribed lands subject to the same conditions, restrictions, and limitations as to taxation, alienation, or encumbrance as now rests thereagainst;"

and the conveyance was subject to the express condition

> "that the execution of this deed by the party or parties hereto or its approval by the Secretary of the Interior shall not operate in any manner to remove any of the restrictions now resting against said lands, or to remove any trust or other conditions imposed upon said land as expressed in the original trust or any other patent issued therefor, or any part thereof; it being distinctly understood and agreed that the scope and intent of this deed is simply to transfer and convey such right, title, and interest as the parties of the first part now have in such lands to the said party of the second part subject to the conditions, restrictions and limitations as now rest thereagainst in the hands of the parties of the first part."

The question presented, therefore, is this: Is a dwelling house erected upon land held in trust by the United States for the benefit of its Indian ward, under contract with the Indian, subject to the state law of Wyoming providing for mechanics' liens, and may such dwelling house be sold to satisfy such liens?

We are of the opinion that the question is answered by the decision of the Supreme Court of the United States in United States v. Rickert, 188 U. S. 432. In that case, the question was presented whether permanent improvements, such as houses and other structures upon lands which had been allotted to Indian allottees under the General Allotment Act and to whom trust patents had been issued, were subject to taxation by the State of South Dakota and to a lien for such taxes. The court quoted the Fifth section of the General Allotment Act, which in part read:

> "That upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever: * * *."

The court, at pages 442, 443, then stated:

"Looking at the object to be accomplished by allotting Indian lands in severalty, it is evident that Congress expected that the lands so allotted would be improved and cultivated by the allottee. But that object would be defeated if the improvements could be assessed and sold for taxes. The improvements to which the question refers were of a permanent kind. While the title to the land remained in the United States, the permanent improvements could no more be sold for local taxes than could the land to which they belonged. Every reason that can be urged to show that the land was not subject to local taxation applies to the assessment and taxation of the permanent improvements.

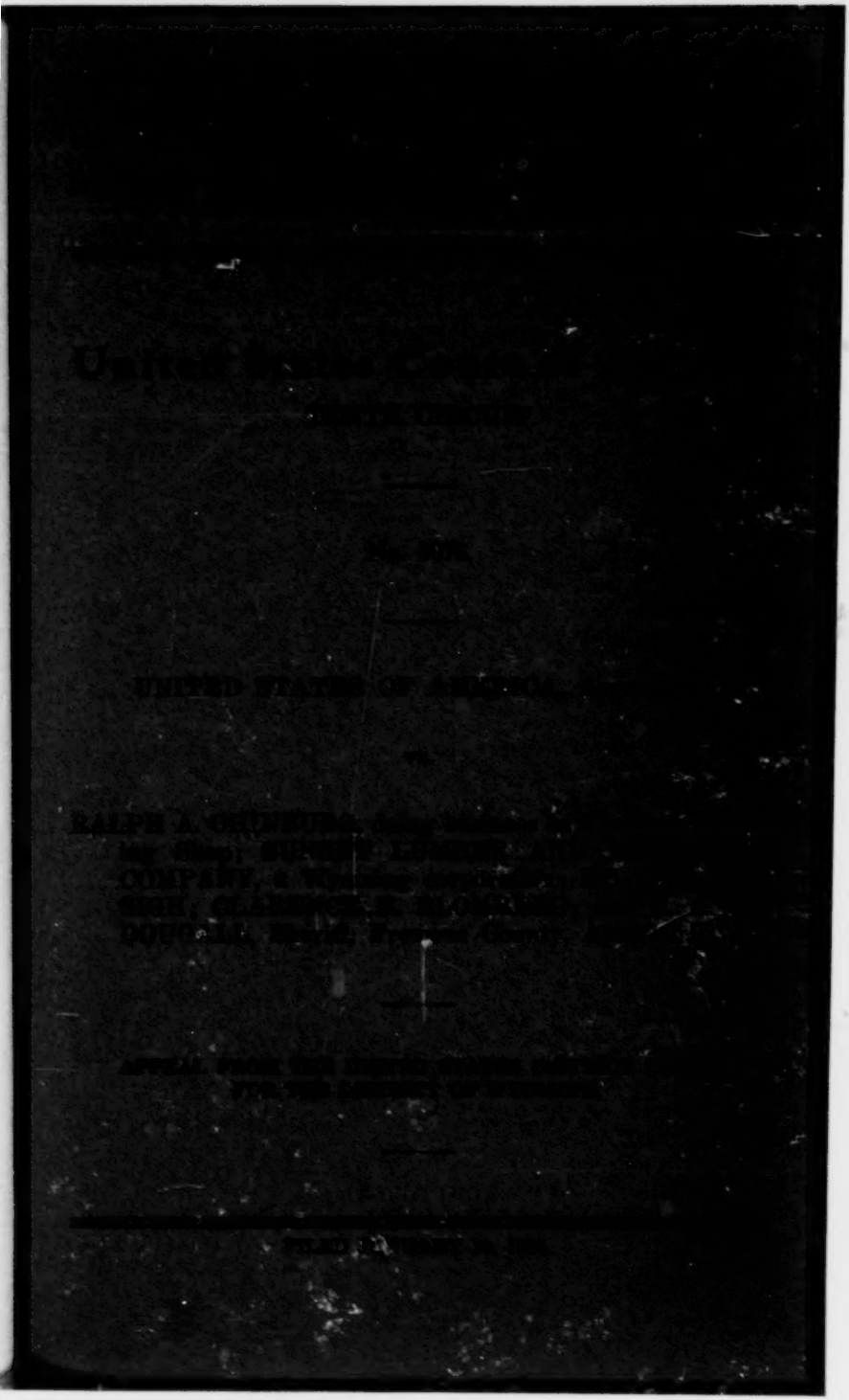
"It is true that the statutes of South Dakota, for the purposes of taxation, classify 'all improvements made by persons upon lands held by them under the laws of the United States' as personal property. But that classification cannot apply to permanent improvements upon lands allotted to and occupied by Indians, the title to which remains with the United States, the occupants still being wards of the Nation, and as such under its complete authority and protection. The fact remains that the improvements here in question are essentially a part of the lands, and their use by the Indians is necesary to effectuate the policy of the United States.

"Counsel for the appellee suggests that the only interest of the United States is to be able at the end of twenty-five years from the date of allotment to convey the *land* free from any charge or encumbrance; that if a house upon Indian land were seized and

> sold for taxes, that would not prevent the United States from conveying the *land* free from any charge or incumbrance; and that, in such case, the Indians could not claim any breach of contract on the part of the United States. These suggestions entirely ignore the relation existing between the United States and the Indians. It is not a relation simply of contract, each party to which is capable of guarding his own interests, but the Indians are in a state of dependency and pupilage, entitled to the care and protection of the Government. When they shall be let out of that state is for the United States to determine without interference by the courts or by any State. The Government would not adequately discharge its duty to these people if it placed its engagements with them upon the basis merely of contract and failed to exercise any power it possessed to protect them in the possession of such improvements and personal property as were necessary to the enjoyment of the land held in trust for them. * * *"

The reasoning in the Rickert Case is equally applicable here. The results that would flow from the taxation of improvements upon land held in trust by the United States and the sale of such improvements for taxes would likewise flow from the imposition of mechanics' liens upon lands held in trust by the United States and the sale of such improvements to satisfy such liens, and would frustrate the declared policy of the United States with respect to such lands.

The judgment is REVERSED and the cause REMANDED with instructions to enter judgment for the United States.



United States Court of Appeals

TENTH CIRCUIT.

No. 5076.

UNITED STATES OF AMERICA, APPELLANT,

vs.

RALPH A. CHINBURG, doing business as Fremont Plumbing Shop; SUNSET LUMBER AND HARDWARE COMPANY, a Wyoming corporation; ED VON KROSIGH; CLARENCE E. BLOMBERG; and C. A. McDOUGALL, Sheriff, Fremont County, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING.

FILED JANUARY 20, 1955.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE T. BLAKE KENNEDY, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING, PRESIDING IN THE FOLLOWING ENTITLED CASE:

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

RALPH A. CHINBURG, doing business as Fremont Plumbing Shop; SUNSET LUMBER AND HARDWARE COMPANY, a Wyoming Corporation; ED VON KROSIGH; CLARENCE E. BLOMBERG, and C. A. McDOUGALL, Sheriff, Fremont County, DEFENDANTS.

No. 3697.-Civil.

Complaint.

1 Comes now the United States of America by its attorneys, John F. Raper, Jr., United States Attorney for the District of Wyoming, and C. N. Bloomfield, Jr., Assistant United States Attorney for the District of Wyoming, by the direction of the Attorney General and at the request of the Department of the Interior, and for a cause of action against the defendants alleges:

I.

That the jurisdiction of the Court is dependent upon the fact that the United States of America is the plaintiff; that the defendants Ralph A. Chinburg, d/b/a Fremont Plumbing Shop, Ed Von Krosigh, Clarence E. Blomberg and C. A. McDougall, Sheriff of Fremont County, are citizens of the State of Wyoming with their place of residence in Riverton, Wyoming, Fremont County, and that the defendant Sunset Lumber and Hardware Company is a corporation organized and existing under and by virtue of the laws of the State of Wyoming, with its principal office at Riverton, Wyoming.

II.

That on or about April 3, 1952, Ralph A. Chinburg, d/b/a Fremont Plumbing Shop, The Sunset Lumber and Hardware Company, a Wyoming corporation, and Ed Von Krosigh filed their petition in the Wyoming District Court for
2 the County of Fremont, docketed as Nos. 7954, 7955 and 7957 respectively, naming as defendants Esther Chamberlin and Jesse Chamberlin, wherein the plaintiffs alleged that they provided work, labor and material in the construction of a dwelling house for the defendants on land described as the N½NE¼ Section 14, Township 1 South, Range 2 East of the Wind River Meridian, Fremont County, Wyoming; that demand had been made for payment; that payment had not been made, and that mechanic's liens had been filed in the amounts of $329.95, $2,475.69 and $1,320.00 respectively, against said property according to law; that plaintiffs prayed for judgment and in default of payment that said property be sold in satisfaction of the judgment.

III.

That on or about April 15, 1952, Clarence E. Blomberg filed his petition in the Wyoming District Court for the County of Fremont, docketed as No. 7972, naming as defendants Esther Chamberlin and Jesse Chamberlin, wherein the plaintiff alleged that he had provided work, labor and material in the construction of a dwelling house for the defendants on the above described lands; that demand had been made for payment; that payment had not been made, and that a mechanic's lien in the amount of $340.37 had been filed against said property according to law; that plaintiff prayed for judgment and in default of payment that said property be sold in satisfaction of the judgment.

IV.

That on or about May 31, 1952, the defendants, by J. J. Hickey, United States Attorney for the District of Wyoming, filed their answer to plaintiffs' petition; that the plaintiffs' motion to strike said answer was granted; that thereafter, on or about October 8, 1952, an amended answer was filed by the defendants wherein it was alleged the land described was trust property the legal title to which was held

by the United States of America; that being trustee, the United States of America held an interest in the said land; that the United States of America was an indispensa-
3 ble party and as such said suit could not be maintained against the United States of America without its consent; that as a second and separate defense, the defendants alleged full payment of the contract in the amount of $18,714.00 to Ernest Grider, the principal contractor; that said defendants prayed for dismissal and abatement of said action and recovery of their costs.

V.

That the four cases were consolidated for trial, there being presented common questions of law and fact; that the parties stipulated to an agreed statement of facts for the purpose of the record.

VI.

That the court entered judgment for the plaintiffs and against the defendants Jesse Chamberlin and Esther Chamberlin; that the court found that the action was brought under the provisions of Ch. 55, Wyo. Comp. Stat. (1945), governing mechanics' liens; that the defendants Jesse Chamberlin and Esther Chamberlin are husband and wife, and Esther Chamberlin is an enrolled Arapahoe Indian and allottee of the N½NE¼, Section 14, Township 1 South, Range 2 East, Wind River Meridian, Fremont County, Wyoming; and it was decreed that the plaintiffs are entitled to liens upon the dwelling house and improvements placed upon the real property under the contract with Ernest Grider, doing business as U. S. Construction Company, "but that said plaintiffs are not entitled to a lien upon one acre or any of the said real property hereinbefore described". The aggregate amount of the liens is $4,968.49, with interest at 7% from the judgment date, September 23, 1953. The court further decreed that the dwelling house situated upon the real property is subject to the liens of the plaintiff and the sheriff of Fremont County was appointed to sell the dwelling house, building and improvements of the defendants Jesse Chamberlin and Esther Chamberlin to satisfy the liens amounting to $4,968.49, and to pay the liens out
4 of the funds received.

VII.

That the proceedings in the Wyoming District Court for the County of Fremont, hereinabove stated, involves real property and improvements thereon, in which the United States of America holds the legal title; that the United States of America was not named party plaintiff or defendant in said action and that the United States of America did not give its consent to be sued in said action.

VIII.

That C. A. McDougall is the acting and qualified Sheriff of Fremont County, Wyoming.

Wherefore, plaintiff prays that the court enter a decree setting aside and removing the judgment liens; that the court enter a decree quieting the title of the plaintiff in and to said real property and improvements thereon as against the claims of the defendants, their heirs, executors, administrators, successors and assigns, and against all persons claiming any right, title or interest through said defendants or under said judgments; that upon due notice given to the defendants, a preliminary injunction be issued herein restraining and enjoining said defendants, their heirs, executors, administrators, successors and assigns and all persons claiming any right, title or interest through said defendants from levying execution, selling or removing said dwelling house from the lands herein described, in satisfaction of their judgment lien.

JOHN F. RAPER, JR., United States Attorney for the District of Wyoming,
C. N. BLOOMFIELD, JR., Asst. United States Attorney for the District of Wyoming,
Attorneys for Plaintiff.

[Verified.]

Filed Dec. 10, 1953.

Answer.

6 Now Come the defendants Ralph A. Chinburg, d/b/a Fremont Plumbing Shop, Sunset Lumber and Hardware Company, a Wyoming Corporation, Ed Von Krosigh, Clarence E. Blomberg, and C. A. McDougall, Sheriff, Fremont County, and for answer to the complaint of the plaintiff herein admit, deny, and allege as follows:

First Defense.

1. The Complaint fails to state a claim against the defendants upon which relief can be granted.

Second Defense.

1. Defendants admit the allegations contained in paragraphs I to VI, inclusive, and paragraph VIII of plaintiff's complaint, and in further exemplification thereof there is attached hereto and made a part hereof as Exhibit A a true and correct copy of the judgment referred to in paragraph VI of plaintiff's Complaint and as Exhibit B a true and correct copy of the Construction Contract, referred to in paragraph VI of plaintiff's Complaint, between Ernest Grider d/b/a U. S. Construction Company, contractor, and Jesse Chamberlin and Esther Chamberlin as owners.

7 2. Defendants admit that the United States of America holds the legal title to the land described as the N/2NE/4 of Section 14, Township 1 South, Range 2 East of the Wind River Meridian, Fremont County, Wyoming; that the United States of America was not named party plaintiff or defendant in said action and did not give its consent to be sued thereon. Defendants further admit that the proceedings in the Wyoming District Court for the County of Fremont involved improvements upon said described land and deny each and every other allegation contained in paragraph VII of the Complaint.

3. That plaintiff herein by its Complaint seeks by this action to collaterally attack said judgment, Exhibit A; that said judgment rendered in favor of these defendants was duly made and given against Jesse Chamberlin and Esther Chamberlin, the defendants therein, and said judgment has not been set aside, modified or reversed and the same remains in full force and effect.

4. That although the defendant Esther Chamberlin is an enrolled Arapahoe Indian and allottee of said real property, she has the right to and did contract with Ernest Grider as contractor to place upon said real property said dwelling house, building, and improvements, and these defendants, as subcontractors with said contractor, are entitled to all of the rights and benefits of said contract, Exhibit B; that as such subcontractors, they are entitled to the benefits of the provisions of Chapter 55, Wyoming Compiled Statutes, 1945 governing Mechanics Liens, and having complied with said statutes were by said judgment, Exhibit A, given a lien upon the dwelling house, building and improvements placed upon said real property under the contract with Ernest Grider; that said judgment by its terms does not involve the real estate described therein but rather it involves the improvements placed thereon by the Chamberlins, and the United States acquired no title to said improvements and could not, under the express terms of the contract, Exhibit B, or the Mechanics Lien Laws of the State of Wyoming, acquire any title to said improvements superior to the title and rights of these defendants.

8 5. That in the stipulation of facts between these defendants and plaintiff and Jesse Chamberlin and Esther Chamberlin as defendants made and entered at the trial of the cause in the District Court of Fremont County, Wyoming and which stipulation is hereto attached and made a part hereof as Exhibit C it is stipulated "that the defendant Esther Chamberlin, is what is known as a competent Indian and is entitled to and does carry on and conduct her own business without supervision or control by the United States and owns her own property separate and apart from the trust real estate above described".

Wherefore, defendants having fully answered plaintiff's complaint on file herein, pray that said plaintiff take nothing by its action; that the cause be dismissed and that defendants recover their costs herein expended.

DONALD SPIKER,
A. G. MCCLINTOCK,
Attorneys for Defendants.

Filed with exhibits and proof of service Jan. 23, 1954.

Exhibit A.

In the District Court of Fremont County, Wyoming, Seventh Judicial District.

9 Ralph A. Chinburg, d/b/a Fremont Plumbing Shop, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7954.

The Sunset Lumber and Hardware Company, a Wyoming Corporation, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7955.

Ed Von Krosigh, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7956.

Clarence E. Blomberg, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7972.

Judgment.

10 The above-entitled actions having been duly and regularly joined and consolidated for trial and coming on regularly to be heard this day for trial, the plaintiffs appearing by Donald Spiker, their attorney, and the defendants Jesse Chamberlin and Esther Chamberlin appearing by the United States Attorney, John F. Raper, Jr., and C. N. Bloomfield, Jr., Assistant United States Attorney, and the parties having stipulated as to the facts in the record, and the issues of fact and law having been fully considered and the Court being fully advised, finds:

1. That the defendant Ernest Grider, doing business as U. S. Construction Company, has not been served with summons herein and that the Sheriff of Fremont County, Wyoming, has returned summons issued out of this Court not found as to the defendant Ernest Grider.

2. That this action is brought under the provisions of Chapter 55, Wyoming Compiled Statutes 1945, governing mechanics' liens.

3. That each and all of the allegations of plaintiff's petition, in respect of which findings are not hereinafter specifically made and set forth, are true.

Now Therefore, it is hereby Ordered, Adjudged, Declared and Decreed:

1. That the defendants Jesse Chamberlin and Esther Chamberlin are husband and wife and the defendant Esther Chamberlin is an enrolled Arapahoe Indian and allottee of the following described real property, to-wit: North half, northeast quarter, section 14, township 1 south, range 2 east, Wind River Meridian, Fremont County, Wyoming.

11 2. That the plaintiffs are entitled to a lien upon the dwelling house building and improvements placed upon said real property under the contract with Ernest Grider, doing business as U. S. Construction Company, but that said plaintiffs are not entitled to a lien upon one acre or any of the said real property hereinabove described.

3. That there is due the plaintiff Ralph A. Chinburg, doing business as Fremont Plumbing Shop, for Ernest Grider doing business as U. S. Construction Company, the sum of $329.95 together with interest thereon at the rate of seven per cent per annum from February 12, 1952, to September 23, 1953, amounting to $37.41, and for the sum of $2.50 costs of filing the notice of lien of said plaintiff, making in all the sum of $369.86, and the total sum to bear interest at the rate of seven per cent per annum from the date hereto until paid.

4. That there is due the plaintiff, Sunset Lumber and Hardware Company, a Wyoming Corporation, from Ernest Grider, doing business as U. S. Construction Company, the sum of $2,475.69 together with interest thereon at the rate of seven per cent per annum from February 2, 1952, to September 23, 1953, amounting to $285.46, and for the sum of $6.50 costs of filing the notice of lien of said plaintiff, making in all the sum of $2,767.65, and the total sum to bear interest at the rate of seven per cent per annum from the date hereof until paid.

5. That there is due the plaintiff Ed Von Krosigh from Ernest Grider, doing business as U. S. Construction Com-

pany, the sum of $1,300 together with interest thereon at the rate of seven per cent from February 7, 1952, to September 23, 1953, amounting to $148.63, and for the sum of $2.00 costs of filing the notice of lien of said plaintiff, making in all the sum of $1,450.63, and the total sum to bear interest at the rate of seven per cent per annum from the date hereof until paid.

12 6. That there is due the plaintiff Clarence E. Blomberg from Ernest Grider, doing business as U. S. Construction Company, the sum of $340.37 together with interest thereon at the rate of seven per cent per annum from February 21, 1952, to September 23, 1953, amounting to $37.98, and for the sum of $2.00 costs of filing the notice of lien of said plaintiff, making in all the sum of $380.35, and the total sum to bear interest at the rate of seven per cent per annum from the date hereof until paid.

7. That the sums so due and owing to each of said plaintiffs as aforesaid are due for work, labor, materials, and supplies performed and furnished upon, in and about the real property hereinabove described in the building and construction of a dwelling house thereon by said plaintiffs, who were sub-contractors under the defendant Ernest Grider, doing business as U. S. Construction Company, who was the contractor with the defendants Jesse Chamberlin and Esther Chamberlin under and by virtue of the contract dated September 10, 1951, with the defendants Jesse Chamberlin and Esther Chamberlin as owners, for the furnishing of work, labor, materials and supplies in the building and construction of said dwelling house upon the premises aforesaid.

8. That the said dwelling house situated upon the real property above described and upon which the same is situated and the interest of the defendants Jesse Chamberlin and Esther Chamberlin in and to said dwelling house at the time of the commencement of the work and furnishing of the materials aforesaid, on the dates alleged in the petition, or which said defendants have since acquired therein are subject to the liens of the plaintiffs herein for all of said sums due said plaintiffs under the provisions of Article II Chapter 55 Wyoming Compiled Statutes 1945, together with in-

terest thereon from the date of this judgment at the rate of seven per cent per annum until paid.

13 9. That the Sheriff of Fremont County, Wyoming, be and he is hereby appointed to sell said dwelling house, building and improvement of the defendants Jesse Chamberlin and Esther Chamberlin as hereinabove described, and said Sheriff shall be and he is hereby ordered, authorized, directed and instructed in the manner prescribed by law and according to the course and practice of this Court to offer for sale and to sell said dwelling house, building and improvement of said defendants Jesse Chamberlin and Esther Chamberlin as hereinabove described to satisfy the amounts of said liens in the aggregate sum of $4,968.49 and accrued interest until paid and the costs and expenses of making said sale, and that said Sheriff make, execute and deliver such deeds, bills of sale and any and all other instruments usual, necessary, expedient, required or proper to the purchaser or purchasers of such dwelling house on said sale.

10. That the said Sheriff out of the proceeds of said sale retain his fees, disbursements and commissions on said sale and the expenses thereof, paying the Court costs herein and to pay to the said plaintiffs out of the proceeds the following sums, to-wit: To Ralph A. Chinburg, doing business as Fremont Plumbing Shop, the sum of $369.86 together with interest accrued thereon at the rate of seven per cent per annum from the date of this judgment until paid; to Sunset Lumber and Hardware Company, a Wyoming Corporation, the sum of $2,767.65 together with interest accrued thereon at the rate of seven per cent per annum from the date of this judgment until paid; to Ed Von Krosigh the sum of $1,450.63 together with interest accrued thereon at the rate of seven per cent per annum from the date of this judgment until paid; to Clarence E. Blomberg the sum of $380.35 together with interest accrued thereon at the rate of seven per cent per annum from the date of this judgment until paid.

11. That the defendants Jesse Chamberlin and Esther Chamberlin and all persons claiming or to blame by, through, from, or under them, and all persons having any claim by, through, or under any lien subsequent to the claims

and the liens of these plaintiffs, and all persons claiming to have acquired any estate or interest in said dwelling house subsequent to the date of the filing of these plaintiffs' liens in this action with the County Clerk and Ex-Officio Registrar of Deeds in and for Fremont County, Wyoming, or subsequent to the date of furnishing labor, supplies, material or service for which judgment is herein given be forever barred and foreclosed of and from all right, title and interest in and to said dwelling house and from all equity of redemption and claim of, in, and to said dwelling house from and after the entry of this judgment.

12. That the purchaser or purchasers of said property at such sale be let into the possession thereof and shall have the right to remove said dwelling house within a reasonable time after the purchase of the same, as hereinbefore provided, from the real property hereinbefore described, and for said purpose said purchaser or purchasers may freely enter upon the real property hereinbefore described, and following the sale of said dwelling house and during the time for removal of said dwelling house the defendants Jesse Chamberlin and Esther Chamberlin and all other persons claiming by, under, or through them subsequent to the claims of the plaintiffs herein are hereby enjoined and debarred from the use and occupation of said dwelling house after the delivery of said Sheriff's deed.

To all of which judgment the defendants Jesse Chamberlin and Esther Chamberlin by their attorneys duly excepted, and their exceptions are hereby saved.

Done in open Court this 23rd day of September, 1953.

By the Court:

(S) FRANKLIN B. SHELDON,
Judge.

Exhibit B.

U. S. Construction Co.

Building—Remodeling—Roofing—Siding

Riverton, Wyoming Date: 9-10-1951

Contract

I/we, the owners of the premises mentioned below hereby contract with and authorize the U. S. Con-

struction Co., as Contractor, to furnish all necessary materials, labor and workmanship, to install, construct and place the improvements according to the following specifications, terms and conditions, on premises below described:

Owner's Name: Jesse & *Ester* Chamberlin.

Job Address:.....; City, Riverton; State, Wyoming.

Specifications

Build Home & Garage according Chamberlins' blue print which includes per tile plumbing and finished inside and out also with *Build-in* Heating system without heat, amt. $7,000 down, $7,000 when house is half completed and balance when completed.

Material and labor to cost $19,000, payable $7,000 on down and $7,000 when half completed and $5,000 when completed; monthly of ..... each, payable on ..... day of each and every month thereafter until paid in full.

(FHA charge per year is to be added to above contract price and is included in monthly payments.)

For all of which, the undersigned owner hereby agrees and promises to pay as aforementioned.

Contractor will do all of said work in a good workmanlike manner.

Any alterations or deviations from this *porposal* and specifications involving extra expense, will be charged for additionally, same to be paid for on completion. Any change from original plan to be done at owner's risk and expense.

Upon completion of above work, all undersigned agree to execute and deliver to contractor, their joint note in accordance with his (their) above obligation and a completion certificate as requested by the contractor. Upon refusal to do so, contractor may at its option declare the entire contract price or so much as then remains unpaid immediately due and payable. It is agreed that if permitted by law contractor shall be paid by the owner(s), all reasonable costs, attorney's fees and expenses, in addition to the amount due and unpaid, that shall be incurred in enforcing the terms

and conditions of this contract and/or any lien in connection therewith.

It is further agreed that this contract may be assigned by contractor; and also that the obligations hereof shall bind and apply to the heirs, successors or estates of the parties.

The undersigned warrant(s) that he is (they are) the owner(s) of the above mentioned premises and that legal title thereto stands of record in his (their name)(s).

The undersigned further agree(s) that title in and to any and all materials furnished by contractor, whether attached to the building or not, shall remain with contractor until the full amount due from the owner(s) shall be paid. All unused materials shall, under any conditions, remain the property of the contractor. All materials delivered by the contractor to above premises, shall be stored and safely kept by the owner(s) and no rental or storage charges therefor shall be made or assessed by owner(s).

Proviso: This contract shall be void and of no effect if credit approval of owner(s) is refused.

There are no representations, guaranties or warranties, except such as may be herein incorporated, if any, nor any agreements collateral hereto nor is this contract dependent upon or subject to any conditions not herein stated. Any subsequent agreement in reference hereto shall be binding only if in writing and signed by all parties.

16 Owner agrees that in event of cancellation of this contract before work is started, Owner shall pay to Contractor on demand thirty (30%) per cent of the contract price as its stipulated damage for the breach.

Receipt of a copy of this contract is hereby acknowledged and it is further acknowledged by the undersigned that the foregoing provisions have been read and the contents thereto understood and that no representation or agreement not herein contained shall be binding upon the parties and that all of the agreements and understandings of said parties are contained herein.

This agreement shall become binding only upon the Con-

tractor's written acceptance hereof or upon the Contractor's commencing performance.

In Witness Whereof, the parties have hereunto signed their names this 10th day of Sept., 1951.

JESSE CHAMBERLIN,
Owner.
ESTHER CHAMBERLIN,
Owner.

Accepted:

.....

Per U. S. Constructed, Contractor.

Exhibit C.

17 In the District Court of Fremont County, Wyoming, Seventh Judicial District.

Ralph A. Chinburg, d/b/a Fremont Plumbing Shop, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7954.

The Sunset Lumber and Hardware Company, a Wyoming Corporation, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7955.

Ed Von Krosigh, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7956.

Clarence E. Blomberg, Plaintiff, vs. Ernest Grider, d/b/a U. S. Construction Company and Jesse Chamberlin and Esther Chamberlin, Defendants. No. 7972.

Stipulation.

18 The Court: This is a consolidation of four cases, and for the purpose of the record let the record show it is the order of the Court that there being a common question of law and fact involved in civil cases 7954, 7955, 7956, and 7972, all of these cases are consolidated for the purpose

of trial, and final judgment will be entered covering all four cases at the same time.

It is stipulated and agreed by and between the plaintiff, Ralph A. Chinburg, and the defendants Jesse Chamberlin and Esther Chamberlin in civil case No. 7954, that said plaintiff furnished labor and materials in the amount of $329.95 in and about the construction of the dwelling house on the north half of the northeast quarter of section 14, township 1 south, range 2 east, WR, in Fremont County, Wyoming, said work and materials being furnished at the instance and request of Ernest Grider, who was the principal contractor under contract of the defendants Jesse Chamberlin and Esther Chamberlin for the construction of said dwelling house under contract dated September 10, 1951, a copy of which is attached to the defendants' answer and is admitted in evidence for the purpose of this stipulation; that the date of the last item being furnished for work and materials was on January 12, 1952; that thereafter the plaintiff claimed a lien on the dwelling house so constructed for the amount of said material and labor and served the defendants Jesse Chamberlin and Esther Chamberlin with a notice of said claim on January 18, 1952, a copy of said notice being attached to the plaintiff's petition as Exhibit B and is admitted in evidence for the purpose of this stipulation; and that thereafter the plaintiff filed his claim of lien in the office of the County Clerk, the Ex Officio Register of Deeds in Fremont County, Wyoming, on March 3, 1952, a copy of said lien statement being attached to the plaintiff's petition as Exhibit A and is admitted in evidence for the purposes of this stipulation.

It is further stipulated that no part of said sum of $329.95 has been paid by the principal contractor or the defendant.

It is further stipulated and agreed by and between the plaintiff, The Sunset Lumber and Hardware Company, a Wyoming Corporation, and the defendants Jesse Chamberlin and Esther Chamberlin in civil cause No. 7955, that said plaintiff furnished labor and materials in the amount of $2,475.69 in and about the construction of the dwelling house on the north half of the northeast quarter of section 14,

township 1 south, range 2 east, WR, in Fremont
19 County, Wyoming, said work and materials being furnished at the instance and request of Ernest Grider, who was the principal contractor under contract of the defendants Jesse Chamberlin and Esther Chamberlin for the construction of said dwelling house under contract dated September 10, 1951, a copy of which is attached to the defendant's answer and is admitted in evidence for the purpose of this stipulation; that the date of the last item being furnished for work and materials was on January 2, 1952; that thereafter the plaintiff claimed a lien on the dwelling house so constructed for the amount of said material and labor and served the defendants Jesse Chamberlin and Esther Chamberlin with a notice of said claim on February 13, 1952, a copy of said notice being attached to the plaintiff's petition as Exhibit B and is admitted in evidence for the purpose of this stipulation; and that thereafter the plaintiff filed his claim of lien in the office of the County Clerk, the Ex Officio Register of Deeds in Fremont County, Wyoming, on March 3, 1952, a copy of said lien statement being attached to the plaintiff's petition as Exhibit A and is admitted in evidence for the purpose of this stipulation.

It is further stipulated that no part of said sum of $2,475.69 has been paid by the principal contractor or the defendant.

It is further stipulated and agreed by and between the plaintiff, Ed Von Krosigh, and the defendants Jesse Chamberlin and Esther Chamberlin in Civil cause No. 7956, that said plaintiff furnished labor and materials in the amount of $1,320 in and about the construction of the dwelling house on the north half of the northeast quarter of section 14, township 1 south, range 2 east, WR, in Fremont County, Wyoming, said work and materials being furnished at the instance and request of Ernest Grider, who was the principal contractor under contract of the defendants Jesse Chamberlin and Esther Chamberlin for the construction of said dwelling house under contract dated September 10, 1951, a copy of which is attached to the defendants' answer and is admitted in evidence for the purpose of this stipulation; that the date of the last item being furnished for work and materials was on January 7, 1952; that thereafter the plain-

tiff claimed a lien on the dwelling house so constructed for the amount of said material and labor and served the defendants Jesse Chamberlin and Esther Chamberlin with a notice of said claim on February 15, 1952, a copy of said notice being attached to the plaintiff's petition as Exhibit B and is admitted in evidence for the purpose of this stipulation; and that thereafter the plaintiff filed his claim of lien in the office of the County Clerk, the Ex Officio Register of Deeds in Fremont County, Wyoming, on March 3, 1952, a copy of said lien statement being attached to the plaintiff's petition as Exhibit A and is admitted in evidence for the purpose of this stipulation.

It is further stipulated that no part of said sum of $1,320 has been paid by the principal contractor or the defendants.

It is further stipulated and agreed by and between the plaintiff, Clarence E. Blomberg, and the defendants Jesse Chamberlin and Esther Chamberlin in civil cause No. 7972, that said plaintiff furnished labor and materials in the amount of $340.37 in and about the construction of the dwelling house on the north half of the northeast quarter of section 14, township 1 south, range 2 east, WR, in Fremont County, Wyoming, said work and materials being furnished at the instance and request of Ernest Grider, who was the principal contractor under contract of the defendants Jesse Chamberlin and Esther Chamberlin for the construction of said dwelling house under contract dated September 10, 1951, a copy of which is attached to the defendants' answer and is admitted in evidence for the purpose of this stipulation; that the date of the last item being furnished for work and materials was on January 21, 1952; that thereafter the plaintiff claimed a lien on the dwelling house so constructed for the amount of said material and labor and served the defendants Jesse Chamberlin and Esther Chamberlin with a notice of said claim on March 21, 1952, a copy of said notice being attached to the plaintiff's petition as Exhibit B and is admitted in evidence for the purposes of this stipulation; and that thereafter the plaintiff filed his claim of lien in the office of the County Clerk, the Ex Officio Register of Deeds in Fremont County, Wyoming, on April 10, 1952, a copy of said lien statement being at-

tached to the plaintiff's petition as Exhibit A and is admitted in evidence for the purposes of this stipulation.

It is further stipulated that no part of said sum of $340.37 has been paid by the principal contractor or the defendant.

Mr. Bloomfield: It is further stipulated by and between the parties that Esther Chamberlin, one of the above named defendants, is enrolled as an Arapahoe Indian, being Enrollee No. 400 and Allottee No. 228c, which affidavit executed by Charlotte A. Cramer, Tribal Secretary, setting forth the above fact is received in evidence; that said Esther Chamberlin received a deed to the above described property from Nellie Trumbull Rhodes, Clerk Trumbull and Beatrice Bearing Trumbull, his wife, and Beatrice Trumbull Spoonhunter, a copy of which deed is marked as Defendants' Exhibit B and received into evidence with the right to substitute a copy of the same.

21 It is further stipulated and agreed that a deed wherein the United States of America was grantor and Kate S. Breaker, also known as Kills above, was grantee, duly executed January 6, 1908, wherein the above described property was allotted to the above named grantee wherein the allotment was subject to all statutory provisions and restrictions for the period of 25 years and wherein it was conveyed in trust to said grantee for the sole use and benefit of said Indian, and that the above described property and the rights of the grantee therein were thereafter acquired through mesne conveyances by Esther Chamberlin, which deed is marked as Defendants' Exhibit C and received into evidence.

It is further stipulated and agreed that Esther Chamberlin on September 14, 1951, did pay to Ernest Grider, doing business as the United States Construction Company, the sum of $7,000; that on November 10, 1951, Esther Chamberlin did pay to Ernest Grider, doing business as United States Construction Company, $5,000; that on December 12, 1951, Esther Chamberlin did pay to Ernest Grider, doing business as the United States Construction Company, the sum of $5,000; that on January 18, 1952, Esther Chamberlin

did pay to Ernest Grider, doing business as United States Construction Company, the sum of $1,714, which check is marked as payment on house in full; that each check carries the endorsement of the United States Construction Company, being endorsed by E. E. Grider and M. C. Jensen. The above checks are hereby received into evidence as Defendants' Exhibit D, E, F, and G.

The Court: It is further stipulated and agreed that the defendant, Esther Chamberlin, is what is known as a competent Indian and is entitled to and does carry on and conduct her own business without supervision or control by the United States and owns her own property separate and apart from the trust real estate above described.

It is further stipulated and agreed that all four of said causes shall be finally submitted to the Court for determination so far as the facts are concerned in said cases upon the above stipulated facts.

Order on Pretrial Conference.

22 A pretrial conference was held in the above entitled cause pursuant to an order, at which the plaintiff was represented by its attorneys, John F. Raper, Jr., United States Attorney, and C. N. Bloomfield, Jr., Assistant United States Attorney, and the defendants by their attorneys, Donald Spiker and A. G. McClintock. After a discussion of the issues in the case it was stipulated by counsel that an agreed statement of facts should be prepared and filed on or before July 1, 1954, upon which said cause should proceed to trial.

Thereupon with the consent of counsel the said cause was set for trial on August 5, 1954, at ten o'clock a.m.

Dated June 16, 1954.

T. Blake Kennedy, Judge.

Filed June 16, 1954.

Stipulation of Facts.

23 It Is Hereby Stipulated and Agreed by and between the parties hereto, acting by and through their respective counsel, that this stipulation of facts shall constitute an

agreed statement of facts for the trial of this cause except as the same may be supplemented as hereinafter provided.

1. That all the facts as alleged in paragraphs 1 to 6 and paragraph 8 of the Plaintiff's complaint on file herein are admitted by the defendants.

2. It is hereby stipulated and agreed that Exhibit A, the Judgment of the District Court of Fremont County, Wyoming, Exhibit B, the contract between Ernest Grider, doing business as United States Construction Company, as Contractor, and Jesse Chamberlin and Esther Chamberlin, as owners, as attached to Defendants' answer herein are full, true and correct copies of such Judgment and Contract and are hereby admitted in evidence as Defendants' Exhibits A and B as to the facts therein contained for the purpose of this case.

3. It is further stipulated and agreed that the above Judgment identified as Exhibit A was entered upon due and proper process upon the Defendants therein, Jesse Chamberlin and Esther Chamberlin, and that the same remains in full force and effect, but that the United States of America was not named party Defendant in said action, did not appear therein and did not give its consent to be sued.

24 4. It is further stipulated and agreed that Esther Chamberlin is enrolled as an Arapahoe Indian, being Enrollee No. 400 and Allottee No. 228c, and the affidavit executed by Charlotte A. Cramer, Tribal Secretary, setting forth the above fact is received in evidence as Plaintiff's Exhibit No. 1 and attached hereto; that a full, true and correct copy of the instrument from the United States of America to Kills Above, or Kate S. Breaker, duly executed January 6, 1908, covering the N½ NE¼ Section 14, Township 1 South, Range 2 East of the Wind River Meridian, Wyoming, is attached hereto and hereby admitted in evidence as Plaintiff's Exhibit 2; that the heirs of Kills Above, or Kate S. Breaker, conveyed said land by an instrument entitled "Deed to Restricted Indian Land" duly and properly executed June 12, 1950, to Esther Chamberlin, Arapahoe Allottee No. 228c, a full, true and correct copy of which is hereto attached and admitted in evidence as Plaintiff's Exhibit No. 3.

5. It is further stipulated and agreed that the trust period applicable to the above described lands were extended by Executive Orders No. 5953 on November 23, 1932, for a period of ten years for all trust patents expiring in the year 1933, and that said trust period was further extended by Executive Order No. 9272 on November 17, 1942, for a period of twenty-five years for all trust patents expiring in the year 1943, full, true and correct copies of which Orders are hereto attached and admitted in evidence as Plaintiff's Exhibits Nos. 4 and 5.

6. It is further stipulated and agreed that Esther Chamberlin paid to Ernest Grider under the contract (Defendants' Exhibit B) the aggregate sum of $18,714.00, and that the last payment made on January 18, 1952, was by check, which check is marked as payment on house in full; that all of the foregoing payments were made by Esther Chamberlin from her personal checking account with the First National Bank of Riverton, Wyoming, which funds were not restricted Indian funds.

7. It is further stipulated and agreed that Esther Chamberlin is an Indian who is entitled to, competent to, and does carry on and conduct her own business without supervision or control by the United States with respect to her own property not subject to federal restrictions and supervision and that such property is separate and apart from the restricted trust property described in paragraph 4 above.

8. It is further stipulated and agreed that this stipulation shall not preclude the offering of additional evidence by either party, but notice of the intention to offer such evidence and the nature thereof shall be submitted in writing to the other party not less than fifteen days before trial.

Dated this 31st day of July, 1954.

JOHN F. RAPER, JR.,
United States Attorney for
the District of Wyoming,
Attorney for Plaintiff.
DONALD SPIKER,
A. G. MCCLINTOCK,
Attorneys for Defendants.

Trial to Court and Time Allowed for Briefs.

26 At this day comes the plaintiff herein by Clifford N. Bloomfield, Jr., Esquire, Assistant United States Attorney for the District of Wyoming, and the defendants by Donald Spiker, Esquire, and Archie G. McClintock, Esquire, their attorneys, also come.

Thereupon this case comes on to be tried by the Court and documentary evidence, including a written stipulation of facts, is introduced in open Court.

At the conclusion of the argument of counsel, It Is Ordered by the Court that this case be submitted on briefs, and that the plaintiff be, and it is hereby, allowed until and including August 16, 1954, within which to serve and file herein its brief, that the defendants be, and they are hereby, allowed until and including August 31, 1954, within which to serve and file their brief, and that the plaintiff be, and it is hereby, allowed until and including September 6, 1954, within which to serve and file a reply brief.

Judge's Memorandum.

KENNEDY, Judge.

Dated October 22, 1954.

This is an action in which the United States as plaintiff seeks to set aside certain judgment liens acquired in the state court under the Mechanics' Lien Law of Wyo-
27 ming by defendants upon improvements placed upon real estate held in trust of an Indian allottee and to quiet the title in and to said real property and improvements against all claims of the defendants. A restraining order was issued by the Court, followed by a preliminary injunction prohibiting the removal of any of the improvements upon the land pending the outcome of the litigation. The claim of the plaintiff was met by the defendants asserting that the complaint fails to state a claim upon which relief could be granted and in effect setting forth the alleged rights of the defendants under the law applicable to the situation.

The case was tried upon an agreed statement of facts and an oral argument had, followed by the filing of trial briefs under a mutual agreement of counsel with the trial Court. Such briefs have now been submitted and the cause is before the Court for consideration. The pertinent facts are substantially as follows: Jesse and Esther Chamber-
28 lain are husband and wife and Esther Chamberlain is an enrolled Arapahoe Indian for whom is held in trust by the United States under the Indian laws the real estate upon which certain improvements were erected. The said Esther Chamberlain is a competent Indian and is entitled to and does carry on and conduct her own business without supervision or control by the United States and owns her own property separate and apart from the trust real estate involved herein. In September 1951 said Jesse and Esther Chamberlain entered into a contract with one Ernest Grider, doing business as United States Construction Company, to erect a home and garage with the appurtenances thereunto appertaining upon the trust real estate for the sum of nineteen thousand dollars payable in certain specified installments. The work proceeded under the contract and from time to time the contractor was paid the sums in accordance with the contract, the final payment purporting to represent the total sum due under such contract. The principal contractor evidently sublet certain portions of the work to be performed to the defendants Ralph A. Chinburg, Sunset Lumber and Hardware Company, Ed Von Krosigh and Clarence E. Blomberg, who furnished certain labor and/or materials in the performance of the original contract for which they had not been paid. In due course of time in accordance with the Mechanics' Lien laws of the state of Wyoming these defendants gave notice and filed liens upon the improvements, which liens were subsequently sought to be enforced in the state court of Fremont County, Wyoming, and judgments thereon awarded in the foreclosure of said liens in favor of defendant Chinburg for the sum of $329.95; The Sunset Lumber and Hardware Company for the sum of $2,475.69; Von Krosigh for the sum of $1,320; and Blomberg for the sum of $340.37.

The United States was not made a party to these suits in the state court and is therefore not bound by the judgments

in the event it should be determined that it was a necessary and indispensable party, although the United States Attorney apparently did appear voluntarily upon the hearing in the state court in a sort of capacity as "amicus curiae" to present to that court the views of the government as to the invalidity of the claims. Appeal from the State Court judgments were not available to the government. Judgments having been entered by the state court, the United
29 States then began this suit to restrain the enforcement of the liens so awarded by the state court. The attempted enforcement of the liens is against the improvements only and not against the land upon which they were erected. Thus is presented the question for determination as to whether or not these defendants have the right under the law to enforce their claims against the improvements under the laws of the United States and the state of Wyoming under the circumstance that their claims involve the furnishing of labor and materials which went into the improvements upon the land held in trust for the said Esther Chamberlain, an enrolled Arapahoe Indian and an allottee of that tribe.

The contention of counsel for the government is that when these improvements were made upon the land so held in trust that they thereby became a part and parcel of the realty, of which the United States was virtually the title owner, and therefore the liens should not and could not be enforced. On the other hand counsel for defendants contend that in the enforcement of liens of this character against improvements under the Wyoming law there is no conflict with the laws of Congress as there is no law prohibiting such action.

Comprehensive briefs have been submitted pointing to many different phases involving situations of a similar character. However it seems that neither side has submitted for consideration of the Court any cases squarely in point, especially none which has been adjudicated in the Federal Courts. It would consume too much time and space for the Court to review these cases.

Seemingly the gist of counsel for plaintiff's argument centers around a statement of the Court in a tax case arising

in the state of South Dakota, United States v. Rickert, 188 U. S. 432, where at page 442 the thought is embraced in the following language:

"Looking at the object to be accomplished by allotting Indian lands in severalty, it is evident that Congress expected that the lands so allotted would be improved and cultivated by the allottee. But that object would be defeated if the improvements could be assessed and sold for taxes. The improvements to which the question refers were of a permanent kind. While the title to the land remained in the United States, the permanent improvements could no more be sold for local taxes than could the land to which they belonged. Every reason that can be urged to show that the land was not subject to local taxation applies to the assessment and taxation of the permanent improvements."

Other cases of a like character along similar lines
30 are cited. One point which should be borne in mind I think is that cases based upon taxation are entitled to be classed in a different category than those involving claims as here upon the Mechanics' Lien Laws of the state.

It is shown by a discussion in 57 C.J.S. at page 739, Section 188, that there is a diversity of opinion in the courts on the general subject perhaps depending somewhat on the phraseology and interpretation of local laws:

"A building or improvement, as distinct from the land, may be subjected to a mechanic's lien under certain circumstances, although a lien on the building or improvement alone has been denied in some cases, and under some statutes it has been broadly held that a mechanic's lien cannot attach to, or be enforced against, a building alone apart from the land on which it is located.

"The circumstances under which a lien has been held to attach to the building alone include generally cases in which the contract for the construction of the building or improvement has been made with a person who is not the owner of the land or his authorized agent or who has no legal title to the land and the owner has duly posted notice of nonresponsibility, cases where a building is erected wholly on the land of another by mistake, and cases where there is a prior

encumbrance on the land. So it has been held that alterations and repairs on a building or structure, if made by a person not the owner of the land, may be subjected to the lien if detachable from the original building without injury or if capable of identification and practical severance; but in some jurisdictions the building may be removed even though injury may result to the realty."

Another thing which perhaps should be borne in mind is that many of the cases cited by counsel for plaintiff were in the earlier days when the Federal Courts under general laws exercised their own notion in dispensing justice which at times was at variance with the interpretation of laws by the state courts. Eventually this brought about the decision of the Supreme Court of the United States in Erie R. Co. v. Tompkins, 304 U.S. 64, decided in 1938, when that court laid down the rather revolutionary rule at page 78, as follows:

"Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law."

31 This presents the question as to whether the Constitution of the United States or any law of Congress has been invaded here by an enforcement of the law of the state as applied to Mechanics' Liens.

The applicable state law, Wyoming Compiled Statutes 1945, Section 55-201, provides:

"55-201. Who entitled to, and extent of lien.—Every mechanic or other person, who shall do or perform any work or labor upon, or furnish any material, fixtures, engines, boilers, or machinery for any building, erection or improvement upon land, or for repairing the same, under or by virtue of any contract with the owner or proprietor thereof, or his or her agent, trustee, contractor, or sub-contractor, upon complying with the provisions of this Act (§§55-201—55-224), shall have for his work, or labor done, or materials, fixtures, boiler or machinery furnished, a lien upon such

building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of one acre, or if such building, erection or improvements be upon any lot of land in any town, city or village, then such lien shall be upon such building, erection or improvement and the lot or land upon which the same are situated, to secure the payment for such work or labor done, or materials, fixtures, engine, boiler or machinery furnished."

At Section 55-221 the statute purports to define the term "owner" and "proprietor" in the following language:

"55-221. 'Owner' and 'proprietor' defined—Infants and married women.—Every person for whose immediate use, enjoyment or benefit any building, erection or improvements shall be made, shall be included by the word 'owner' or 'proprietor' thereof, under this Act * * * "

By this it would seem to appear that the Chamberlains were in a class defined as owners or proprietors to authorize the improvement, leaving only the question to be determined as to whether under the state law enforcement of the liens could be made against the improvements alone as distinguished from the land upon which the improvements were erected. The Supreme Court of Wyoming under the law then prevailing, similar to the statute which we have at present, indicated that a lien may be made upon the erection and improvements separate and distinct from the land upon which the improvements were placed. In Clarke v. Shoshoni Lumber Co., 31 Wyo. 205, a short statement of the holding is made on page 219, as follows:

"Under this statute it is clear that a lien is granted on the erection and improvement for which the material is furnished, and there can be no doubt that under it the
32 court has the right to declare such lien and order it to be sold. The judgment need not contain, as it did not in this case, any reference to the right of removal; that right is granted by the statute independent of any judgment in the case. If the structure cannot be removed, the inability does not arise out of the judgment, but out of physical conditions entirely separate and apart from it. In such case it is not the judgment that cannot be enforced, it is the pos-

sibility that the removal may be ineffective by reason of such physical conditions."

The state courts as a rule have adopted the same general holding and the following case is selected for use from the Supreme Court of California largely because it contains some of the reasons for the rule. In English v. Olympic Auditorium, 20 P.(2) 946 (Calif.), at page 951 appears the following:

"The contention that because the building is a more or less permanent structure, attached to the realty, it must be held as against the mechanics to be a part of the realty, is not tenable. It is true that as between the landlord and tenant it was agreed that the building when erected should become part of the realty, but that agreement could not affect the lien given by the Constitution to the mechanics. It is our opinion, when a lease provides that the lessee may construct permanent structures on the leased premises, which structures at the termination of the lease shall become the property of the lessor, that it must be held by reason of the constitutional and statutory provisions above discussed that as far as mechanics are concerned the structure does not become a fixture until all mechanic lien claimants are paid. We think that this rule works substantial justice between the parties."

From this review of the situation and the legal aspects inhering therein the Court has reached the conclusion that the liens in question are legally acquired and should be entitled to judgments of foreclosure against the improvements on the land in question. First, there seems to be no specific law of Congress with which the state law comes in conflict. Second, the Indian owner involved is competent and admittedly authorized in every way to transact business in her own right without interference under any law of Congress and is virtually in the same class as any American citizen entitled to own property and to transact business, which would logically include improvements to her real estate held in trust. Third, the equities of the situation appeal strongly to the Court in that these labor and material men stand to lose their entire claims, while at the same time the
33 government without the improvements remaining upon the land would be in the same position as to the own-

ership and value of the land before the improvements were placed thereon. Fourth, while the Chamberlains were perhaps lax in paying the original contractor in full before the claims of subcontractors whose rights under the Mechanics' Lien law had expired, the fact remains that the defendants have no enforceable claim against the Chamberlains other than through the mechanics' lien provisions because there was no privity of contract between them and the owners and it may be readily assumed from the circumstances that the principal contractor is financially irresponsible. In other words it would seem that the spirit of justice and equity spreads widely to the side of the defendant lien holders and applicable laws should be construed accordingly.

For the reasons stated the findings of the Court will be in favor of the defendants and against the plaintiff denying the right of the claim of the plaintiff to have the liens declared null and void and removing the cloud of title from the real estate, with the injunction heretofore in force to be dissolved and a permanent injunction denied. This being a Court-tried case counsel for defendants will be required to submit suitable findings of fact and conclusions of law incorporating all essential findings and conclusions which are inherent in supporting the decision of the Court but in harmony with the views expressed in this memorandum, with an appropriate judgment, in collaboration with plaintiff's counsel if convenient, on or before the 5th day of November, 1954, and the clerk will enter an order accordingly.

Filed Oct. 22, 1954.

Findings of Fact and Conclusions of Law.

34 The above cause came on for trial August 5, 1954, before the Court sitting without a jury, the Plaintiff appearing by John F. Raper, Jr., United States Attorney, and C. N. Bloomfield, Assistant United States Attorney, and the Defendants appearing by Donald Spiker and A. G. McClintock, at which time it was announced that the matter would be presented upon a Stipulation of Facts theretofore prepared and filed in the cause, whereupon oral argument was had and written briefs requested, which briefs having

been submitted and the Court now having considered the Agreed Statement of Facts and written briefs and being duly advised in the premises, makes the following Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact

The Court finds:

1. That the suit is one between the United States of America and the defendants, citizens and residents of the State of Wyoming.

2. That Esther Chamberlin is an enrolled Arapahoe Indian for whom is held in trust by the United States under the Indian laws the N/2NE/4 of Section 14, T. 1 South, R. 2 East, Wind River Meridian, Fremont County, Wyoming.

3. That the said Esther Chamberlin is a competent Indian who is entitled to and does carry on and conduct her own business without supervision or control by the United States and who owns property separate and apart from the trust real estate.

4. That in September of 1951 the said Esther Chamberlin, joined by her husband, Jesse Chamberlin, entered into a contract with one Ernest Grider, d/b/a U. S. Construction Company, for the erection of a dwelling house on said trust property, the full contract price for which has been paid by Esther Chamberlin to the said Ernest Grider.

5. That Defendants in this cause, other than C. A. McDougall, furnished labor and materials in the construction of said dwelling house for which they have not been paid; that they filed and served notice of claim of liens upon the said dwelling house and separately filed four suits in the District Court of Fremont County, Wyoming, seeking the enforcement of said liens against said dwelling house.

6. That the said suits, being Nos. 7954, 7955, 7956 and 7972, were consolidated for trial and on September 23, 1953, the said District Court of Fremont County, Wyoming, entered judgment in favor of the four plaintiffs and against the said Ernest Grider as follows: To Ralph E. Chinburg $369.86, to Sunset Lumber and Hardware Company $2,767.65, to Ed Von Krosigh $1,450.63, and to Clarence E. Blomberg

$380.35, with interest thereon at the rate of 7% per annum from the date of judgment; that by said judgment, it was further provided that said amounts should constitute a lien upon the dwelling house theretofore erected upon the said trust premises, and the defendant herein, C. A. McDougall, sheriff of Fremont County, Wyoming, was ordered to sell the dwelling house in the manner provided by the Mechanics Lien Law of the State of Wyoming, for the satisfaction of such liens.

7. That said judgment was entered upon due and proper process upon the defendants, Esther Chamberlin and Jesse Chamberlin, and no appeal was taken therefrom.

8. That the United States was not a party to and did not appear in said suit.

Conclusions of Law.

36 From the foregoing Facts, the Court concludes:

1. That the Court has jurisdiction of the subject matter of the action and of the parties thereto.

2. That by the express provisions of the Act of February 8, 1887 (25 U. S. C. A. sec. 331 et seq.) Esther Chamberlin was without right or authority to make any conveyance or contract for the conveyance or other alienation of the lands held in trust for her by the United States of America; that the said Esther Chamberlin was incompetent to make any contract that would alienate the title of the United States in and to the described lands.

3. That the said Esther Chamberlin was competent to enter into any contract she might see fit for the erection of a dwelling house or other improvements upon said premises involving the use of her own separate funds.

4. That the Mechanics Lien Law of the State of Wyoming, being Article 2 of Chapter 55, Wyoming Compiled Statutes of 1945, was and is applicable to the contract for such improvements and to the enforcement of a lien against said improvements.

5. That under and by virtue of the provisions of the Wyoming Mechanics Lien Law, there exists in favor of the

Defendants herein, other than C. A. McDougall, a lien for materials furnished and work done in the erection of improvements, which lien is granted upon the improvements only, separate and distinct from the land upon which such improvements are erected.

6. That the enforcement of a lien upon the improvements only erected upon the lands held in trust by the United States of America does not constitute an alienation of the property of the United States and does not affect the title of the United States in and to the said lands.

7. That there is no law of the United States prohibiting the enforcement of the lien only upon the improvements where title to the land is held in the United States in
37 trust for an enrolled Indian.

8. That the judgment of the District Court of Fremont County, Wyoming, adjudging the lien and ordering the sale of the improvements only for the enforcement of said lien was and is a valid exercise of the jurisdiction of that Court, with which this Court can not interfere.

9. That Plaintiff's application for injunction against the enforcement of said judgment and the sale ordered thereby should be denied and that the Temporary Restraining Order and Preliminary Injunction heretofore entered herein pursuant to stipulation of the parties should be dissolved and set aside.

To the foregoing Conclusions of Law 4 to 9, inclusive, Plaintiff takes and is granted an exception.

Let judgment be entered herein in accordance herewith.

Dated November 5, 1954.

T. BLAKE KENNEDY, Judge.

Filed Nov. 5, 1954.

Judgment.

38 This cause came on to be tried before the Court upon a Stipulation of Facts, and the same having been duly considered and the Court having made its Findings of Fact and Conclusions of Law,

It Is Ordered that Plaintiff take nothing by its action herein, that the injunction prayed for be denied and the action be dismissed upon the merits.

It Is Further Ordered, that the Temporary Restraining Order and Preliminary Injunction entered herein restraining the Defendants from levying execution, selling or otherwise removing the dwelling house from the lands legally described as the N/2NE/4 Section 14, T. 1 South, Range 2 East, Wind River Meridian, Fremont County, Wyoming, be and the same hereby is set aside and dissolved.

Dated November 5, 1954.

T. BLAKE KENNEDY, Judge.

Filed Nov. 5, 1954.

Notice of Appeal.

39 Notice is hereby given that the United States of America, Plaintiff in the above-entitled cause, hereby appeals to the United States Court of Appeals for the Tenth Circuit, from the final judgment entered in this action on November 5, 1954.

JOHN F. RAPER, JR.,
United States Attorney for
the District of Wyoming,
C. N. BLOOMFIELD, JR.,
Assistant United States Attorney
for the District of Wyoming,
Attorneys for Plaintiff.

Filed Dec. 14, 1954.

Order Granting Injunction Pending Appeal.

40 This cause having come on to be heard upon the motion of the plaintiff and upon the filing of a stipulation by the parties hereto wherein it is agreed that an injunction be issued pending the appeal of this matter and said injunction to be upon the same terms and conditions as the preliminary injunction granted and dissolved herein and

pursuant to Rule 62 (c) and (e) of the Federal Rules of Civil Procedure:

It Is Therefore Ordered, Adjudged and Decreed that an injunction be and it is granted to the plaintiff against all the defendants herein, their agents, servants, employees and attorneys and the agents, servants and attorneys of each of them or anyone acting by or through them, restraining them from levying execution, selling or removing the dwelling house on those lands described in the complaint on file herein in satisfaction of their judgment lien.

Dated: December 22, 1954.

T. BLAKE KENNEDY, Judge.

A. G. MCCLINTOCK.

Filed Dec. 22, 1954.

Statement of Points to be Relied On.

42 1. The district court erred in not finding and concluding that the improvements, erected upon the land held in trust by the United States for its Indian ward, are clothed with the same immunity as the land itself, and hence are not subject to the imposition of liens under the mechanic's lien law of Wyoming.

2. The district court erred in concluding (Concl. 4) that under Wyoming law a mechanic's lien can validly attach to improvements erected upon land held in trust by the United States for its Indian ward.

3. The district court erred in concluding (Concl. 5) that under Wyoming law a lien validly exists on the improvements here in question in favor of the appellees.

4. The district court erred in concluding (Concl. 6) that the enforcement of a lien upon the improvements only does not constitute an alienation of property of the United States and does not affect the title of the United States in and to the land involved.

5. The district court erred in concluding (Concl. 7) that there is no law of the United States prohibiting the enforcement of a lien upon improvements only where title to the

land is held by the United States in trust for an enrolled Indian.

6. The district court erred in concluding (Concl. 8) that the judgment of the District Court of Freemont County, Wyoming, adjudging the lien and ordering sale of the improvements, is valid and binding on the United States.

43 7. The district court erred in adjudging that the liens upon the improvements are valid and in denying a permanent injunction against the enforcement of the liens.

8. The district court erred in not adjudging that the liens are void and should be set aside and cancelled, in not adjudging that the title of the United States to the land and improvements be quieted as against the claims of appellees, and in not permanently enjoining the appellees from any and all efforts to levy execution upon, sell, or remove the improvements upon the lands.

UNITED STATES OF AMERICA,
By PERRY W. MORTON,
Assistant Attorney General.
JOHN F. COTTER,
FRED W. SMITH,
Attorneys, Department of Justice, Washington, D. C.
JOHN F. RAPER, JR.,
United States Attorney for the District of Wyoming.
C. N. BLOOMFIELD, JR.,
Assistant United States Attorney for the District of Wyoming.

Filed with proof of service Jan. 6, 1955.

Clerk's Certificate.

United States of America, District of Wyoming, ss.

45 I, Capitola G. Allison, Clerk of the United States District Court for the District of Wyoming, do hereby certify that the above and foregoing papers and proceedings, attached to this certificate, are original papers and proceed-

ings contained in the record in said Court in Case No. 3697 Civil, United States of America, Plaintiff, vs. Ralph A. Chinburg, doing business as Fremont Plumbing Shop, et al., Defendants, as follows:

Complaint, filed on December 10, 1953. Answer, filed on January 23, 1954. Order on Pretrial Conference, entered and filed on June 16, 1954. Stipulation of Facts, being Plaintiff's Exhibit No. 6 at trial on August 5, 1954. Trial to Court and Time Allowed for Briefs, entered on August 5, 1954. Judge's Memorandum, filed on October 22, 1954. Findings of Fact and Conclusions of Law, filed on November 5, 1954. Judgment, entered and filed on November 5, 1954. Notice of Appeal, filed on December 14, 1954. Order Granting Injunction Pending Appeal, entered and filed on December 22, 1954. Designation by the United States, Appellant, of the Contents of the Record on Appeal and Statement of Points to be Relied On.

I further certify that said original record is herewith transmitted to the United States Court of Appeals for the Tenth Circuit pursuant to the Notice of Appeal and Designation of Contents of the Record on Appeal filed in the above entitled cause by appellant, United States of America.

Witness my hand and the seal of said Court on the 19th day of January, A. D. 1955, at Cheyenne, Wyoming.

CAPITOLA G. ALLISON,
(Seal) Clerk of the U. S. District Court
for the District of Wyoming.

Filed, United States Court of Appeals, Tenth Circuit, Jan. 20, 1955. Robert B. Cartwright, Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 423

RALPH A. CHINBURG, doing business as Fremont Plumbing Shop; SUNSET LUMBER AND HARDWARE COMPANY, a Wyoming corporation; ED VON KROSIGH; CLARENCE E. BLOMBERG; and C. A. MCDOUGALL, Sheriff, Fremont County, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals is reported at 224 F. 2d 177, and appears also at Pet. App. 17-22.

JURISDICTION

The judgment of the Court of Appeals was entered on June 29, 1955. The petition for a writ of

certiorari was filed on September 26, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether permanent improvements, erected by an Indian upon land held in fee by the United States in trust for the Indian, become part of the trust land and are thus immune from the imposition of mechanics' liens under state law and from sale to satisfy such liens.

STATUTE INVOLVED

Section 5 of the General Allotment Act of February 8, 1887, 24 Stat. 388, 389, 25 U.S.C. 348, provides in part as follows:

> Upon the approval of the allotments provided for in this act by the Secretary of the Interior, he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect, and declare that the United States does and will hold the land thus allotted, for the period of twenty-five years, in trust for the sole use and benefit of the Indian to whom such allotment shall have been made, or, in case of his decease, of his heirs according to the laws of the State or Territory where such land is located, and that at the expiration of said period the United States will convey the same by patent to said Indian, or his heirs as aforesaid, in fee, discharged of said trust and free of all charge or incumbrance whatsoever:

> *Provided,* That the President of the United States may in any case in his discretion extend the period. *And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void:* * * *. [Italics supplied.]

STATEMENT

The facts in this case were stipulated and are set out in the decision of the court of appeals (Pet. 17-19). On January 6, 1908, certain land in Wyoming was allotted to an Indian, Kate S. Breaker, under section 5 of the General Allotment Act of February 8, 1887, *supra.* As required by the Act the patent provided that the United States hold title in trust for the Indian for a period of twenty-five years, and the trust period has been extended by Executive Orders to 1968, as authorized by the Act. On June 12, 1950, the land was conveyed by the heirs of the allottee, with approval of the Secretary of the Interior, to another Indian allottee, by a deed which preserved the status of the land as held in fee by the United States.

In September, 1951, Esther Chamberlin contracted with Ernest Grider, d/b/a U.S. Construction Company, for the erection of a dwelling house on the trust property. The petitioners, other than C. A. McDougall, furnished labor and materials in the construction of the house and filed notice

of claim of liens upon the improvements. Esther Chamberlin paid to Ernest Grider $18,714.00 in full satisfaction of her indebtedness for the house, such payment being out of her unrestricted funds. The four petitioners who had filed mechanics' liens, not having been paid off by Grider, filed suits against the Indian in the District Court of Fremont County, Wyoming, seeking enforcement of the liens, and on September 23, 1953, judgment was entered against the Indian for an aggregate amount of $4,968.49, with interest at 7%. The judgment declared liens for such amount. The state court judgment provided as follows:

> 2. That the plaintiffs are entitled to a lien upon the dwelling house building and improvements placed upon said real property under the contract with Ernest Grider, * * *, but that said plaintiffs are not entitled to a lien upon one acre or any of the said real property hereinabove described.

The judgment entered in those cases further appointed the Sheriff of Fremont County, Wyoming, to sell the improvements to satisfy the liens as declared.

The United States was not a party to and did not participate in those actions. Thereafter, on December 10, 1953, the United States brought the instant action against the lienors and C. A. McDougall, Sheriff of Fremont County. The complaint alleged that the United States holds legal title to the land and improvements, was not a party

to the state court litigation, and has not consented to such a suit. The complaint prayed that the liens be set aside, that the Government's title be quieted against any claims of the defendants, and that they be enjoined from levying execution, selling, or removing the improvements.

The cause was submitted to the district court which concluded that the state court judgments were valid and that the Government's application for injunctive relief should be denied. Upon appeal, the court of appeals reversed upon the authority of this Court's decision in *United States* v. *Rickert,* 188 U.S. 432.

ARGUMENT

The court of appeals correctly held that the case is governed by the decision in *United States* v. *Rickert, supra.* There the question was whether a lien for state taxes could attach to permanent improvements erected by Indians upon lands held, as is the land in this case, in trust by the United States and whether such improvements could be sold to satisfy such a lien. This Court held that the improvements became part of the realty, enjoyed the same immunity, and that the "object [of Congress in making the allotments] would be defeated if the improvements could be assessed and sold for taxes" (188 U.S. at p. 442).

The circumstance that this case involves an attempt to impose mechanics' liens, rather than tax liens, is irrelevant. As the court of appeals put it (Pet. App. 22), "The results that would flow

from the taxation of improvements upon land held in trust by the United States and the sale of such improvements for taxes would likewise flow from the imposition of mechanics' liens upon lands held in trust by the United States and the sale of such improvements to satisfy such liens, and would frustrate the declared policy of the United States with respect to such lands."

Petitioner purports to distinguish the *Rickert* case (Pet. 9-10) by asserting that there the improvements were admitted to be a part of the realty held in trust. The holding to this effect was not put by this Court on the ground of admissions, but as a matter of federal law (188 U.S. at 442). Moreover it is not true that the improvements were admitted to be part of the realty. Respondent in the *Rickert* case argued that the improvements were personalty by virtue of a state law which undertook to declare them personalty (Rickerts' brief, pp. 7-9). This Court flatly rejected the argument that state law could intervene to frustrate the federal policy underlying the making of the allotments in trust (188 U.S. at 442), and this establishes the irrelevancy of Wyoming law relied upon by petitioner (Pet. 7-8).

The suggestion of conflict (Pet. 10-11) between the decision of the court of appeals and the decisions in *McCurdy* v. *United States,* 246 U.S. 263, and *Williams* v. *First National Bank,* 216 U. S. 582, is baseless. The court of appeals was so unimpressed with the relevancy of those cases that it made no mention of them, although

they were relied upon by the petitioners. And it is enough to say of them here that they dealt with matters far afield and wholly unrelated to the question in this case, and in no way purported to overrule or limit the *Rickert* decision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Solicitor General.
PERRY W. MORTON,
Assistant Attorney General.
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Attorneys.

OCTOBER, 1955

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